

HOUSE BILL 1165
By Buck

AN ACT to amend Tennessee Code Annotated, Title 39,
Chapter 17, Part 4, relative to ephedrine products.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 39, Chapter 17, Part 4, is amended by
adding the following as a new, appropriately designated section:

39-17-4__.

(a) It is an offense for a retail distributor or an employee of a retail distributor to
knowingly sell, transfer, or otherwise furnish in a single transaction:

(1) More than three (3) packages of one (1) or more products that the
distributor or employee knows to contain ephedrine, pseudoephedrine, or
phenylpropanolamine, their salts, isomers, or salts of isomers; or

(2) Any single package of any product that the distributor or employee
knows to contain ephedrine, pseudoephedrine, or phenylpropanolamine, which
contains more than ninety-six (96) pills, tablets, gelcaps, capsules, or other
individual units or more than three (3) grams of ephedrine, pseudoephedrine, or
phenylpropanolamine, their salts, isomers, or salts of isomers, or a combination
of any of these substances, whichever is smaller; or

(3) Any product containing ephedrine, pseudoephedrine, or
phenylpropanolamine, unless:

(A) The product is sold in package sizes of not more than three (3)
grams of ephedrine, pseudoephedrine, or phenylpropanolamine base and
is packaged in blister packs, each blister containing not more than two (2)
dosage units; or

(B) Where the use of blister packs is technically infeasible, that is packaged in unit dose packets or pouches; or

(C) In the case of liquids, the drug is sold in package sizes of not more than three (3) grams of ephedrine, pseudoephedrine, or phenylpropanolamine base; or

(4)

(A) Any product containing ephedrine, pseudoephedrine, or phenylpropanolamine to any person under the age of eighteen (18) years.

(B) The person making the sale shall require proof of age from the purchaser, unless from the purchaser's outward appearance the person would reasonably presume the purchaser to be twenty-five (25) years of age or older.

(C) "Proof of age" means any document issued by a governmental agency which:

(i) Contains a description of the person or a photograph of the person, or both, and gives the person's date of birth; and

(ii) Includes, without being limited to, a passport, military identification card, or driver license.

(b)

(1) Any retail distributor or employee of the retail distributor who violates subsection (a) commits a Class A misdemeanor and may also be subject to a civil fine not to exceed five thousand dollars (\$5,000).

(2)

(A) The prosecuting attorney may waive any civil penalty under this section if the retail distributor or employee of the retail distributor establishes that such person acted in good faith to prevent violations of this section, and the violations occurred despite the exercise of due diligence.

(B) In making a determination, the prosecuting attorney may consider evidence that an employer trained employees how to sell, transfer, or otherwise furnish substances specified in this section in accordance with the provisions of this section.

(c)

(1) It is an offense for any person, other than a person or entity described in §39-17-402(20) or §39-17-402(22) or subdivision(e)(2) of this section, to knowingly purchase, acquire, or otherwise receive in a single transaction:

(A) More than three (3) packages of one (1) or more products that the person knows to contain ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers; or

(B) Any single package of any product that the person knows to contain ephedrine, pseudoephedrine, or phenylpropanolamine, which contains more than ninety-six (96) pills, tablets, gelcaps, capsules, or other individual units or more than three (3) grams of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers, or a combination of any of these substances, whichever is smaller.

(2) Any person who violates the provisions of subdivision (c)(1) commits a Class A misdemeanor.

(d) This section shall not apply to:

(1) Pediatric products primarily intended for administration to children under twelve (12) years of age, according to label instructions, either:

(A) In solid dosage form whose individual dosage units to not exceed recommended dosage, according to label instructions, does not exceed fifteen milligrams (15 mg) of ephedrine, pseudoephedrine, or phenylpropanolamine; or

(B) In liquid form whose recommended dosage, according to label instructions, does not exceed fifteen milligrams (15 mg) of ephedrine, pseudoephedrine, or phenylpropanolamine per five milliliters (5 ml) of liquid product;

(2) Pediatric liquid products primarily intended for administration to children under two (2) years of age for which the recommended dosage does not exceed two milliliters (2 ml) and the total package content does not exceed one fluid ounce (1 fl. oz.); or

(3) Products that the board of pharmacy, upon application of a manufacturer, exempts by rule from this section because the product has been formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine or its salts or precursors.

(e) As used in this section:

(1) "Ephedrine", "pseudoephedrine", and "phenylpropanolamine" mean any drug product containing ephedrine, pseudoephedrine, or

phenylpropanolamine or any of their salts, isomers, or salts of isomers, alone or in a mixture;

(2) "Retail distributor" means a grocery store, general merchandise store, drugstore, convenience store, or other related entity, the activities of which, as a distributor of ephedrine, pseudoephedrine, or phenylpropanolamine products, are limited exclusively to the sale of ephedrine, pseudoephedrine, or phenylpropanolamine products for personal use, both in number of sales and volume of sales, either directly to walk-in customers or in face-to-face transactions by direct sales and includes any person or entity that makes a direct sale or has knowledge of the sale, but does not include any manager, supervisor, or owner not present and not otherwise aware of the sale, nor shall it include the parent company of that entity if the company is not involved in direct sales regulated by this section; and

(3) "Sale for personal use" means the sale in a single transaction to an individual customer for a legitimate medical use of a product containing ephedrine, pseudoephedrine, or phenylpropanolamine in quantities at or below that specified in subsection (a) of this section, and includes the sale of those products to employers to be dispensed to employees from first-aid kits or medicine chests.

(f) Nothing in this section shall prohibit a person under the age of eighteen (18) years from possessing and selling ephedrine, pseudoephedrine, or phenylpropanolamine as an agent of the minor's employer acting within the scope of the minor's employment.

SECTION 2. This act shall take effect July 1, 2005, the public welfare requiring it.